ARROW VISTA SDN BHD

v.

JAWATANKUASA KERJA TANAH WILAYAH PERSEKUTUAN

HIGH COURT MALAYA, KUALA LUMPUR
AZMEL MAAMOR J
[ORIGINATING MOTION NO: R2-25-32-98]
23 DECEMBER 1998

ADMINISTRATIVE LAW: *Remedies - Mandamus - Whether O. 53 Rules of the High Court 1980 must be complied with - Effect of non-compliance - Whether failure to comply warrants action to be struck off*

LAND LAW: *Administration - Officers - Land matters in the Federal Territory - Whether only Land Executive Committee authorised to deal in such matters - Whether Prime Minister may also make decisions in such matters - Federal Constitution, arts. 39, 43 & 43A*

LAND LAW: *Administration - Appeals and remedies - Non-compliance with s. 418(1) National Land Code 1965 - Delay in appealing to court - Whether appeal ought to be struck off*

LAND LAW: *Alienation and incidents - Restriction in interest - Land categorised for use of "building" - Whether landowner may construct on such land without obtaining approval - National Land Code 1965, ss. 116(1)(d) & 124(1)(c)*

On 28 August 1995, the previous owner of a piece of land ('the land') made certain applications under ss. 124 and 200 of the National Land Code 1965 ('the Code') with a view to build condominiums on the land. *Vide* a letter dated 25 September 1996 to the previous owner, the Prime Minister in his capacity as the minister responsible for land in the Federal Territory rejected the applications. Subsequently, on 16 November 1996, the plaintiff as the new owner of the land appealed to the Ketua Setiausaha Negara to reconsider the decision. However, this appeal too was rejected. The plaintiff then applied to court pursuant to s. 418 of the Code by way of originating motion seeking, *inter alia*, an order directing the defendant to approve the said applications. The issues that arose for the court's consideration were: (i) whether this application was made within the period stipulated in s. 418(1) of the Code; (ii) whether the Prime Minister was authorised to decide applications under ss. 124 and 200 of the Code; and (iii) whether, in the light of the fact that the land had been categorised for use of "building", an application under s. 124 to alter the category of land use was necessary for purposes of constructing condominiums.

Held:

[1] As the relief requested under para. (c) of the originating motion is in fact a request for an order of *mandamus*, it must comply with the provisions of O. 53 Rules of the High Court 1980 ('the RHC'). Order 53 r. 1 of the RHC requires the plaintiff to obtain leave of the court before filing this action whilst by O. 53 r. 3, notice of such application together with the cause papers will have to be served on the Attorney General before obtaining leave. Such procedures had not been complied with by the plaintiff and on this ground alone, the action should be struck off.

[2] Section 418(1) of the NLC stipulates that appeals to the court must be made within three months from the date the decision appealed against was communicated to the plaintiff. The fact that the plaintiff appealed to the Ketua Setiausaha Negara on 16 November 1996 showed clearly that as of that date the plaintiff had knowledge of the decision of the defendant and as such the period of three months should begin from that date. Thus, there was a delay of almost 17 months before this action was filed and since the plaintiff never applied for any extension of time to file the action, this application should be struck off for want of compliance with s. 418 of the NLC.

[3] For all intents and purposes, the no. 1 administrative head concerning land matters in the Federal Territory is the Prime Minister. All the rest including the Land Executive Committee are his subordinates. There should not be any doubt whatsoever that making the decisions in respect of the applications made by the plaintiff/previous owner of the land was within the powers lawfully granted to the Prime Minister.

[4] Section 124(1)(c) read together with s. 116(1)(d) of the NLC clearly shows that a landowner does not have an automatic power to commence construction of condominiums on the land without obtaining prior approval from the defendant even though the land was under the category "building".

[Plaintiff's application struck off.]

Case(s) referred to:
London Passengers Transport Board v. Moscrop [1942] AC 332 ***(refd)***

Legislation referred to:
Federal Constitution, Arts. 39, 43, 43A
National Land Code 1965, ss. 116(1)(d), 124(1)(c), 200, 418
Rules of the High Court 1980, O. 53 rr. 1, 3

For the applicant - Michael KT Chow; M/s Logan Sabapathy & Co
For the respondent - Asma Bee; SFC

Reported by Izzaty Izzuddin

JUDGMENT

Azmel Maamor J:

The plaintiff in this case had applied by way of an originating motion for the following orders:

(a) a declaration that the decision of the Defendant (Jawatankuasa Kerja Tanah Wilayah Persekutuan) as embodied in its letter dated 14.1.1998 purporting to reject and/ or refuse approval to the applications made under sections 124 and 200 of the National Land Code, 1965 in relation to the land held under H.S.(D) 32106 P.T. No. 881 Mukim and district of Kuala Lumpur (the said land) is null and void and of no effect and/or consequently hereby set aside pursuant to the provisions of section 418 of the National Land Code, 1965.

(b) a declaration that in all the circumstances of the case there is no necessity for an application under section 124 of the National Land Code, 1965 to be made for and in respect of the said land whether pursuant to the Development Order dated 17.11.1995 issued by Datuk Bandar Kuala Lumpur or otherwise.

(c) an order for specific relief against the Defendant directing the Defendant to forthwith process and approve the pending or other applications made in respect of the said land under sections 124 and/or 200 of the National Land Code, 1965 upon such terms and/or directions as this Honourable Court deems fit in the circumstances of the case.

(d) such further relief or other orders and/or directions be made or given as this Honourable Court deems fit in the circumstances of the case including if necessary a declaration that the Defendant's letter of 25.9.1996 was in truth and substance not a valid or proper decision of the Defendant in relation to the August 1995 applications made by Tunku Makmun bin Tunku Sulaiman under sections 124 and 200 of the National Land Code, 1965 on the said land.

(e) costs of and occasioned by these proceedings be provided for in favour of the plaintiff.

The facts of the case can be summarised as follows. On 28 August 1995 Tunku Makmun bin Tunku Sulaiman (previous owner of the said land) made applications under s. 124 of the National Land Code 1965 for purposes of

altering the category of land use of the said land and also under s. 200 of the National Land Code for approval to surrender part of the said land for construction of roads.

On 27 July 1996, the Prime Minister in his capacity as the Minister responsible for land in the Federal Territory made a decision to reject the applications by the previous owner of the said land. The said decision was sent to the previous owner of the said land by way of a letter dated 25 September 1996. No new applications were subsequently made by the previous owner of the said land or by the plaintiff.

On 16 November 1996 the plaintiff as the new owner of the said land made an administrative appeal to the Ketua Setiausaha Negara requesting him to reconsider the applications made under ss. 124 and 200 of the National Land Code made by the previous owner of the said land. However, this appeal was rejected by the Ketua Setiausaha Negara *vide* letter to the plaintiff dated 14 January 1998 and 3 March 1998. Subsequent to that on 10 April 1998 the plaintiff filed this action in court by way of an originating motion by invoking s. 418 of the National Land Code.

The first issue that needs to be considered is whether the plaintiff was right in bringing this action by way of an originating motion under s. 418 of the National Land Code. Section 418 reads as follows:

> 418. APPEALS TO THE COURT
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> (1) Any person or body aggrieved by any decision under this Act of the State Director, the Registrar or any Land Administrator may, at any time within the period of three months beginning with the date on which it was communicated to him, appeal therefrom to the Court.
>
> (2) Any such appeal shall be made in accordance with the provisions of any written law for the time being in force relating to civil procedure; and the Court shall make order thereon as it considers just.
>
> (3) In this section "decision" includes any act, omission, refusal, direction or order.

It was alleged by the defendant that the plaintiff in taking this action under s. 418 of the National Land Code for prayers under paras. a, b, c and d by way of an originating motion was procedurally improper. The defendant contended that for a relief of a declaration it is essential that the party really interested in the action be made a party to the action failing which the declaration should not be granted (See *London Passengers Transport Board v. Moscrop*) [1942] AC 332. This application was commenced by the previous owner of the said land, yet he was not made a party to this action.

I am of the view that the defendant's argument cannot be sustained. The previous owner of the said land was no longer an interested party as all his rights and interests in respect of the said land had been transferred to the plaintiff who had purchased the said land from him. As such he need not be made a party to this action anymore.

While I would not disagree that this action be properly taken by way of an originating motion, the reliefs that the defendant applied for were not confined only to declaration but also for orders of *mandamus* as stated in paras. c and d of the prayers. In fact the prayer applied under paragraph a is more in the nature of an order of *certiorari* disguised as a declaratory order. As the relief requested under para. c is in fact a request for an order of *mandamus* it triggers the requirement to comply with the provisions of O. 53 of the Rules of the High Court 1980. One of the essential requirements that the plaintiff had to comply is to obtain leave of the court under O. 53 r. 1 before taking this action. And before obtaining the leave notice of such application together with the cause papers will have to be served on the Attorney General as required under O. 53 r. 3. In this application such procedures had not been complied with by the plaintiff. As such I am of the view that on this ground alone the plaintiff's action should be struck off.

The second issue deals with the question of whether this application was made within the period as stipulated under s. 418 of the National Land Code. Section 418(1) states that such appeal must be made at any time within three(3) months from the date the decision was communicated to the plaintiff. The question is when was such decision communicated to the plaintiff. As had been mentioned above the application under s. 124 and s. 200 of the National Land Code was made by the previous owner of the said land on 28 August 1995. The decision to reject it was made by the Prime Minister on 27 July 1996 and such decision was sent by letter to the previous owner of the said land on 25 September 1996. However no evidence of service of the letter effected to the previous owner of the said land was produced. Yet on 16 November 1996 the plaintiff in making an administrative appeal to the Ketua Setiausaha Negara produced a copy of the said letter of rejection in its appeal application. In my view the production of that letter showed clearly that the plaintiff as of that date had knowledge of the decision of the defendant and as such the period of three month should begin from that date. No amount of denial by the plaintiff including that the letter being addressed to the previous owner of the said land would help to argue that the plaintiff had no knowledge of the decision. In fact it was quite legitimate for the defendant to send the letter to the previous owner of the said land because the original application under s. 124 and s. 200 of the National Land Code were made by the previous owner

of the said land. And there was no evidence adduced that the previous owner of the said land or the plaintiff had informed the defendant of the change of ownership to the defendant. To argue that the change of ownership had been registered in the register of title and as such the defendant should therefore have knowledge is devoid of any merit. It was incumbent upon the plaintiff or the previous owner of the said land to inform the defendant in writing of the change of ownership in respect of the application under s. 124 and s. 200 of the National Land Code especially for purposes of communication. Failure to inform the defendant of the change of ownership gives the defendant the right to make communication to the previous owner of the said land. In the circumstances I am fully satisfied that the decision of the defendant dated 25 September 1995 had been communicated to the plaintiff on or before 16 November 1996. Hence for purposes of taking any action under s. 418(1) of the National Land Code the period of three (3) month should commence on 16 November 1996.

But the plaintiff only began this action in court under s. 418 of the National Land Code on 10 April 1998. It had certainly passed the three months period, by almost 17 months. The plaintiff had therefore failed to comply with the requirement of s. 418(1) of the National Land Code. In its application the plaintiff had never applied for any extension of time to file this action. As no such application for extension of time was made by the plaintiff the question of granting any extension of time does not arise. Hence this application should be struck off for want of compliance with the provision of s. 418(1) of the National Land Code.

The third issue concerns the validity of the decision dated 27 July 1996 made by the Prime Minister. It was argued by the plaintiff that the Prime Minister was not authorised to make the decision under s. 124 and s. 200 of the National Land Code. The Federal Territory (Modification of National Land Code) Order 1974 had delegated the authority to deal with land matters in the Federal Territory to the Land Executive Committee for the Federal Territory and as such no other persons should be authorised to deal with such matters. Therefore the Prime Minister was not an authorised person to make such decision. I am of the view that there is no merit in this argument. Ministers including the Prime Minister derive their powers under art. 39 of the Federal Constitution. Article 39 reads:

> 39. EXECUTIVE AUTHORITY OF FEDERATION
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> The executive authority of the Federation shall be vested in the Yang di-Pertua Agong and exercisable subject to the provisions of any federal law and of the Second Schedule, by him or by the Cabinet or any Minister authorised by the Cabinet but Parliament may by law confer executive functions on other persons.

In accordance with the Perintah Menteri-Menteri Kerajaan Persekutuan 1995 made by virtue of arts. 43 and 43A of the Federal Constitution by the Yang di-Pertuan Agong the Prime Minister was entrusted with a list of duties and responsibilities as stated in the abovesaid Perintah. One of the several responsibilities of the Prime Minister is to take care of the Pejabat Tanah Wilayah Persekutuan in matters pertaining to *"Pentadbiran Jabatan-Jabatan Tanah dan Galian Wilayah Persekutuan Kuala Lumpur dan Labuan" dan "Tanah Perlombongan dan Tanah Rizab Melayu di Wilayah Persekutuan Kuala Lumpur dan Labuan"*. For all intent and purpose the No. 1 administrative head concerning land matters in the Federal Territory is the Prime Minister. All the rest including the Land Executive Committee are his subordinates. There should not be any doubt whatsoever that making decisions in respect of applications under s. 124 and s. 200 of the National Land Code which was applied by the plaintiff/previous owner of the said land was within the powers lawfully granted to the Prime Minister. As I have remarked above the Land Executive Committee of the Federal Territory is an authority subordinate to the Prime Minister on matters dealing with land in the Federal Territory. Whatever authority has been given specifically to the Land Executive Committee of the Federal Territory, such authority is also lawfully granted to the Prime Minister as the Minister in charge of the Federal Territory. As an analogy, whatever authority has been given to the judge of the Sessions Court, the Chief Justice of the Federal Court who is in charge of all courts in Malaysia will also have authority and if he so wishes the Chief Justice has the power to hear and decide cases in the Sessions Court.

On the issue whether, for purpose of constructing condominiums on the said land which had already been categorised for use of **"building"**, there would still be a need to make an application under s. 124 of the National Land Code, I completely agree with the submission of the senior federal counsel that s. 124 read together with s. 116 of the National Land Code shows clearly that such application has to be made and the approval obtained before such works can commence. Section 116 deals with implied conditions affecting land subject to the category **"building"**. Under sub-s. 1(d) it says:

> that no such building shall be demolished, altered or extended without the prior consent of the appropriate authority.

The term **"appropriate authority"** in this section refers not to the Dewan Bandaraya Kuala Lumpur but to the defendant.

Hence s. 124(1)(c) read together with s. 116(1)(d) of the National Land Code clearly shows that a landowner does not have automatic power to commence construction of condominiums on the said land even though it is under

category **"building"** without obtaining prior approval from the defendant. I therefore held that the applicant's contention on this issue cannot be sustained.

After having considered all the circumstances of this case I ruled that the decision of the Prime Minister had been validly executed. And his reasons for rejecting the application were fair and just. I was unable to find any reason why that decision should be disturbed.

In the circumstances and for the reasons as I have stated above the application was dismissed with costs.